IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.02.2007

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

T.C.(Appeal) No.104 of 2003

Asst. Commissioner of Income Tax
Chennai ...Appellant

-vs-

M/s.Mohan Breweries and Distilleries
Limited, Chennai ...Respondent

Substituted the name of the respondent
as per order dated 5.2.2007 in TCMP.NO.4/07

Tax Case (Appeal) is against the order of the Income Tax Appellate Tribunal Madras A bench, dated 19.2.2003 in ITA.No. 1929/Mds/94 for the Assessment year 1991-92and order dataed 21/7/1994 from the commissioner of income Tax (Appeal) I Madras in ITA.No. 21/94-95 and the order dated 17.3.94 from Assistant Commissioner of Income tax Central Circle-II (4) Madras-34 in PAN/GIR.No. 47-039-CV-394)

For Appellant : Mrs.Pushya Sitaraman
Senior Standing Counsel for
Income Tax
For Respondent : Mr.V.S.Jayakumar

JUDGMENT

(Judgment of the Court was delivered by
CHITRA VENKATARAMAN,J)

This Tax Case Appeal is filed under Section 260-A of the Income Tax Act, 1961, by the Revenue for the assessment year 1991-92 raising following question of law:-

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that excess sales tax collected and retained as a deposit due to a dispute cannot be taxed in the hands of the assessee?"

2. The assessee filed a return income for the assessment year 1991-92 claiming a huge loss. The Assessing Authority, however, added a sum of

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Rs.1,86,70,554/- being the sales tax collected and kept in deposit, pending the decision on the assessment. Following the earlier decisions on the same issue, the Tribunal allowed the appeal of the assessee holding that the said deposit of tax collected could not be held to be the income of the assessee.

3. The learned counsel appearing for the assessee brought to our attention that the Supreme Court, in its order dated 25.3.1991, directed the appellant herein to deposit the amount with the Government till the appeal was disposed of. In the light of the said order, the assessee had already deposited the said amount to the Government.

4. The learned counsel for the respondent submits that in view of the corresponding deduction that he was entitled to, the question could not be seriously agitated by the respondent herein.

5. Having regard to the above said fact and following the decision of the Supreme Court reported in 245 ITR 421 (KCP LIMITED v. COMMISSIONER OF INCOME TAX) as well as 242 ITR 107 (COMMISSIONER OF INCOME TAX v. SOUTHERN EXPLOSIVES CO), the appeal is allowed holding that the tax collected and retained as deposit was liable to be taxed in the hands of the assessee.

bg

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To
1.THE ASSISTANT REGISTRAR
INCOME APPELLATE TRIBUNAL, III FLOOR,
RAJAJI BHAVAN CHENNAI.
2. THE ASSISTANT COMMISSIONER
OF INCOME TAX, CHENNAI.
3. THE COMMISSIONER OF INCOME TAX
(APPEALS I) NUNGAMBAKKAM MADRAS. -034
4. THE ASSISTANT COMMISSIONER
OF INCOME TAX, CENTRAL CIRCLE II (4)
MADRAS 34.
+ One CC to Mrs. Pusya Sitaraman Advocate SR 10293
+ One cc to Mr. V.S. Jayakumar Advocate SR 10242
SSV (co)
sg 15/3/07

T.C. (Appeal) No.104 of 2003
19.2.2007

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